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American Historical Association

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STATEMENT OF SAMUEL R. GAMMON ON BEHALF OF THE NATIONAL COORDINATING COMMITTEE FOR THE PROMOTION OF HISTORY BEFORE THE SUBCOMMITTEE ON LEGISLATION OF THE HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE
February 8, 1984 1:30 p.m.

My name is Samuel R. Gammon. I am a retired Ambassador and the executive director of the American Historical Association. I am presenting testimony on behalf of the National Coordinating Committee for the Promotion of History and particularly for the 20,000 members of the Organization of American Historians and the American Historical Association in opposing HR 4431 and HR 3460. These bills, together with Senate bill 1324, would amend the National Security Act of 1947 to exempt partially the Central Intelligence Agency from the Freedom of Information Act, as amended.

Mr. Chairman, historians are deeply troubled by any proposal that would automatically debar legitimate research into the past of our great nation. We perceive the two bills as doing just that. There is a broad area of agreement between even the most zealous historical researchers and the most ardent government advocates of protecting security information in the hands of the federal government. We all agree that openness, as created by our democratic traditions and by the Freedom of Information Act, promotes the general welfare; we all agree that classifying and withholding certain items of security information relating to military, diplomatic and intelligence matters provide for the common defense. We perceive no constitutional conflict here on the principles. Our differences come on matters of application. Both sides would agree absolutely that at the secret

end of a scale of 1 to 100 there are matters to be protected and both sides would agree absolutely that at the other end of the scale there are matters which should legitimately be open to public scrutiny. It is the 80% in between which brings scholars swarming out of their studies and bureaucrats from their warrens at Langley in bitter disagreement.

Mr. Chairman, historians accept that documents on intelligence methods and sources need to be protected and that those documents should properly be classified and should be withheld from scrutiny, whether requested under the Freedom of Information Act or coming up for declassification under systematic review procedures. The chief argument of the Central Intelligence Agency and of proponents of the two bills is that hunting for and identifying documents which will probably be refused anyway is just too darn much work, and therefore the Agency should be permitted to designate Operations Division, Science and Technology Division and Security files as exempt from such mandatory review. In lengthy discussions with Senator Durrenberger with respect to S. 1324, the progenitor of these two bills, the Agency conceded that it would review all such files at least once every ten years to see if it could dump them back into the pile eligible for FOIA consideration. That concession is incorporated in HR 4431 (page 8, lines 3-12).

I fail to see, therefore, how this labor-saving legislation, designed to exempt the CIA from finding out what is in its "operational" files in response to FOIA requests, will save it any work whatever. True, they could wait ten years from enactment before launching a crash project to review all documents in the exempt category, and perhaps the Micawber principle would let something turn up in the meantime

to save them from the shirked labor, but I submit that this would be neither prudent management nor responsible stewardship.

The proposed HR 4431, therefore, would not serve its purpose.

Mr. Chairman, during my 27-year diplomatic career, I spent over five years on the seventh floor of the State Department, encountering a great deal of classified material, including much sensitive compartmented intelligence from the CIA. Indeed, the daily Top Secret Summary of the Department, seen every morning by the President, SecDef, DCI, and SecState, and which usually contains 25-30% codeword material or sensitive compartmented intelligence, was produced under my direct supervision during two assignments to the Executive Secretariat totalling three and one-half years. (I claim no credit, however, for the readership this interesting publication has lately enjoyed among the inmates at Lorton. That is a form of openness which even zealous historians deplore.) I also know how harried bureaucrats operate, having been one myself during 15-hour days under Secretary Kissinger.

The existence of an exemption for operational and other files as proposed under these two bills would constitute a temptation more than mortal flesh could bear. As a beneficiary of such an exemption, I know what I would have done--put wheels on my safes and trundled them across the hall to the operations division at need!

Mr. Chairman, historians are deeply concerned at any legislation that exempts entire categories of files from FOI search and review. We who have spent many years in the Archives or federal records centers or presidential libraries know that operational files of government agencies go far beyond sources and methods. Traditionally, they also

include the policy guidelines and the planning processes of operational activities and are the core of the decision-making process of government. Although the intent of these bills is to leave "non-operational files" subject to search and review, only those bits of intelligence specifically transferred to such files from their safeguarded operational cousins would be avilable for the normal operation of FOIA procedures. Historians, and indeed congressional oversight committees, may be permitted some skepticism under this heading, and I note that page 6 of HR 4431 is devoted to preventing the proposed operational files' exemption from search and review from being applied against intelligence committees of the Congress and other oversight entities.

Mr. Chairman, another concern of the historical community which I represent is the total absence of any bottom line for exemption. So long as CIA every ten years reviews its exemption designation, they may last in perpetuity. Surely even the Director of Central Intelligence would concede that Secretary of State Jefferson's modest CIA-like intelligence operations with the confidential fund of the State Department (which still exists) might now be revealed? How about merely 100-year-old material relating to President Chester A. Arthur? Or even 50-year-old operations, modest indeed, against Mussolini and Hitler?

Would the exemptions proposed for Operations Division, Science and Technology Division, and Security Division of CIA also extend to other agencies, such as State, Defense, the NSC? That is not clear, but our historian colleagues specializing in Near Eastern history are not the only ones to know something about letting the camel's nose into the tent.

Mr. Chairman, in conclusion, historians believe that these two bills are bad legislation. They would not save CIA any labor in the long run. They would inevitably lead to the use of operational exemptions as a "cover," and they constitute a very bad precedent. There are enough other assaults on openness and the public's right of legitimate access--and we need only cite National Security Decision Directive 84 and Executive Order 12356, as the most glaring examples--for this branch of government to enact the proposed bill.